

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LINDA ANDERSON,

Plaintiff,

-v-

N.Y.C. DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

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ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 9-17-13

No. 12 Civ. 4064 (RJS) (RLE)

ORDER ADOPTING REPORT AND
RECOMMENDATION

RICHARD J. SULLIVAN, District Judge:

Plaintiff Linda Anderson (“Plaintiff”), proceeding *pro se*, brings this action pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, against the New York City Department of Corrections, Assistant Deputy Warden Andrea Hall, Captain James Galileo, and Captain Robert Ellis (collectively, “Defendants”), alleging that she was the victim of disparate treatment, retaliation, and a hostile work environment.¹ (Doc. No. 1.) In an Order dated October 11, 2013, the Court referred this matter to the Honorable Ronald L. Ellis, Magistrate Judge, for general pre-trial supervision and dispositive motions requiring a report and recommendation. (Doc. No. 12.)

On January 22, 2013, Defendants filed a motion to dismiss the Complaint in its entirety pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. (Doc. No. 17.) On June 19,

¹ Plaintiff did not indicate the protected category to which she belongs and that provided the basis for the alleged discrimination against her. Indeed, even where the standard complaint form for employment discrimination claims used by Plaintiff prompts the employee to put a check mark next to the basis upon which she was discriminated against – such as “race,” “gender/sex,” etc. – Plaintiff did not select any of the protected categories listed on the form. (See Doc. No. 1.)

2013, Judge Ellis issued an Order requiring Plaintiff to submit a letter to the Court explaining why no opposition had been filed and stating that her failure to do so would result in the dismissal of the case. (Doc. No. 20.) Plaintiff submitted a letter to Judge Ellis, dated June 26, 2013, requesting that her case not be dismissed, stating the difficulty she has had in obtaining counsel, and noting that she filed a subsequent EEO complaint after this case commenced for which her employer allegedly retaliated against her. (Doc. No. 21.)

On August 19, 2013, Judge Ellis issued a Report and Recommendation (the “Report”) recommending that Defendants’ motion to dismiss be granted because Plaintiff did not list any defendant against which a Title VII claim may be brought and, even if she had, Plaintiff failed to plead sufficient facts to state a claim for disparate treatment, retaliation, or hostile work environment. (Doc. No. 22.) The Report also recommended that Plaintiff be afforded leave to file an amended complaint that addresses the deficiencies in the current Complaint. (*Id.*) The Report notified the parties of their right, pursuant to Federal Rule of Civil Procedure 72, to file written objections to the Report and that a failure to do so would result in the waiver of those objections both in this Court and on appeal to the Second Circuit. (*Id.*) The period in which any objections must be filed has expired and no party has filed any objections. *Cf. Frank v. Johnson*, 968 F.2d 298 (2d Cir. 1993).

A district court reviewing a report and recommendation “may accept, reject or modify, in whole or in part, the findings or recommendation made by the magistrate judge.” 28 U.S.C. § 636(b)(1). When no objections to a report and recommendation are made, the court may adopt the report if there is no clear error on the face of the record. *Adee Motor Cars, LLC v. Amato*,

388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005); *La Torres v. Walker*, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000). After reviewing the record, the Court finds that the Report is not clearly erroneous. Accordingly, the Court adopts the Report in its entirety, and for the reasons set forth therein, dismisses the Complaint as to all Defendants but grants Plaintiff leave to file an amended complaint. Thus, IT IS HEREBY ORDERED THAT if Plaintiff wishes to file an amended complaint, she shall submit her proposed amended complaint on or before October 18, 2013, by sending it to the Pro Se Office at the following address: United States District Court of the Southern District of New York, Office of Pro Se Litigation, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Room 200, New York, NY 10007.

The Clerk of the Court is respectfully requested to terminate the motion at Doc. No. 17.

SO ORDERED.

Dated: September 12, 2013
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

A copy of this Order has been mailed to:

Linda Anderson
229-08 148th Ave.
Laurelton, NY 11413